

1 **UTAH ADMINISTRATIVE RULEMAKING ACT**2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **This act modifies the Administrative Rulemaking Act. This Act amends the definition of a**
6 **rule and clarifies when an agency's written statement is determined to be a rule.**

7 This act affects sections of Utah Code Annotated 1953 as follows:

8 AMENDS:

9 **63-46a-2**, as last amended by Chapter 138, Laws of Utah 2001

10 ENACTS:

11 **63-46a-3.5**, Utah Code Annotated 1953

12 *Be it enacted by the Legislature of the state of Utah:*

13 Section 1. Section **63-46a-2** is amended to read:

14 **63-46a-2. Definitions.**

15 As used in this chapter:

16 (1) "Administrative record" means information an agency relies upon when making a
17 rule under this chapter including:

18 (a) the proposed rule, change in the proposed rule, and the rule analysis form;

19 (b) the public comment received and recorded by the agency during the public
20 comment period;

21 (c) the agency's response to the public comment;

22 (d) the agency's analysis of the public comment; and

23 (e) the agency's report of its decision-making process.

24 (2) "Agency" means each state board, authority, commission, institution, department,
25 division, officer, or other state government entity other than the Legislature, its committees, the
26 political subdivisions of the state, or the courts, which is authorized or required by law to make
27 rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or
28 perform other similar actions or duties delegated by law.

29 (3) "Bulletin" means the Utah State Bulletin.

30 (4) "Catchline" means a short summary of each section, part, rule, or title of the code
31 that follows the section, part, rule, or title reference placed before the text of the rule and serves

the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9) (a) "File" means to submit a document to the division as prescribed by the division.

(b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

~~[(13) (a) "Policy" means a statement applying to persons or agencies that:]~~

~~[(i) broadly prescribes a future course of action, guidelines, principles, or procedures;~~

~~or]~~

~~[(ii) prescribes the internal management of an agency:]~~

~~[(b) A policy is a rule if it conforms to the definition of a rule:]~~

~~[(14)]~~ (13) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.

~~[(15)]~~ (14) "Publication date" means the inscribed date of the bulletin.

~~[(16)]~~ (15) "Register" may include an electronic database.

~~[(17)]~~ (16) (a) "Rule" means an agency's written statement that:

(i) is explicitly or implicitly required by state or federal statute or other applicable law;

~~[(ii) has the effect of law;]~~

~~[(iii)]~~ (ii) implements or interprets a state or federal legal mandate; and

~~[(iv)]~~ (iii) applies to a class of persons or another agency.

(b) "Rule" includes the amendment or repeal of an existing rule.

(c) "Rule" does not mean:

63 (i) orders;
64 [~~(ii)~~ unenforceable policies;]
65 [~~(iii)~~ internal management policies of the agency]
66 (ii) an agency's written statement that applies only to internal management and that
67 ~~[do]~~ does not restrict the legal rights of a public class of persons or another agency;
68 [~~(iv)~~] (iii) the governor's executive orders or proclamations;
69 [~~(v)~~] (iv) opinions issued by the attorney general's office;
70 [~~(vi)~~] (v) declaratory rulings issued by the agency according to Section 63-46b-21
71 except as required by Section 63-46a-3; ~~[or]~~
72 [~~(vii)~~] (vi) rulings by an agency in adjudicative proceedings, except as required by
73 Subsection 63-46a-3(6)[~~7~~]; or
74 (vii) an agency written statement that is in violation of any state or federal law.
75 [~~(18)~~] (17) "Rule analysis" means the format prescribed by the division to summarize
76 and analyze rules.
77 [~~(19)~~] (18) "Substantive change" means a change in a rule that affects the application
78 or results of agency actions.
79 Section 2. Section **63-46a-3.5** is enacted to read:
80 **63-46a-3.5. Rules having the effect of law.**
81 (1) (a) An agency's written statement that conforms to the definition of a rule shall be
82 made in accordance with the requirements of this chapter.
83 (b) An agency's written statement under Subsection (1)(a) is not enforceable as a rule if
84 the written statement is not made in accordance with the requirements of this chapter.
85 (2) Any rule made in accordance with the requirements of this chapter has the effect of
86 law.
87 **OR**
88 (1) An agency's written statement is a rule if it conforms to the definition of a rule
89 under Section 63-46a-2, but the written statement is not enforceable unless it is made as a rule
90 in accordance with the requirements of this chapter.
91 (2) An agency's written statement that is made as a rule in accordance with the
92 requirements of this chapter is enforceable and has the effect of law.
93 **OR**

94 Delete lines 81-87 and insert on line 58:

95 "(ii) the agency has taken through the rulemaking process of this chapter, which
96 includes providing opportunity for public comment;"

97 Reinstate subsequent bracketed subsection numbers.